

REMARKS

Following the Advisory Action of April 24, 2007, a Notice of Appeal was filed on May 8, 2007. The present Request for Continued Examination is submitted in lieu of the Appeal Brief, in order to reopen prosecution of the application and to enter the present claim amendments in the record.

Claims 1-23 are pending in the application, and claims 3, 4, 9, 10, 13, 14, 19, and 20 have been withdrawn from examination. Claims 1, 11, 12, 15, 17, 18, and 23 are amended herein. Therefore, upon entry of the present amendment, claims 1, 2, 5, 7-8, 11-12, 15-18, and 21-23 will be subject to examination.

A. The Rejection under 35 USC 102(b)

Claims 1, 2, 5-6, 15-17, and 21-23 have been rejected under 35 USC 102(b) as allegedly anticipated by U.S. Patent No. 6,071,305 to Brown et al. ("Brown").

A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegall Bros. v. Union Oil of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). An anticipating prior art patent or printed publication must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention. *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990); *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 1566, 1567 (Fed. Cir. 1988).

Independent claims 1, 15 and 23, as currently amended, are not anticipated by *Brown* or any of the prior art of record, because *Brown* does not teach or suggest that the stent is produced by having a tubular member formed "into a plurality of circumferential rings," and that the stent has "one or more hollow core sections" in fluid communication with the external environment through a multiplicity of pores.

The Examiner has held that *Brown* anticipates claims 1, 2, 5-6, 15-17, and 21-23 because, in FIG. 17, *Brown* discloses "a stent 111 having a plurality of hollow core sections 114 extending from one end to the other helically and containing a therapeutic agent 123 in a polymer" and

because “[i]t can be seen that there is a multiplicity of pores 108 disposed circumferentially about the exterior surface of the stent and are in fluid communication with the core sections as seen that they intersect.” *Office Action*, page 2.

With regard to FIG. 17, and to related FIGS. 16 and 18, all reproduced below, *Brown* teaches that a stent 111 may be produced by carving a helical groove 120 on a tube, by coating the tube with an active agent 123, which fills groove 120 (FIG. 16), and then by cutting through slots 108 (crossing through groove 120) into the wall of the tube (FIG. 17). The tube is finally expanded in a radial direction, causing groove 120 to be divided into a plurality of groove portions 114 separated one from the other (FIG. 18).

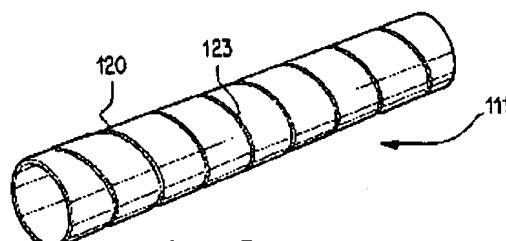


FIG. 16

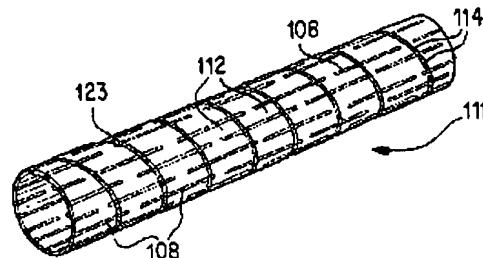


FIG. 17

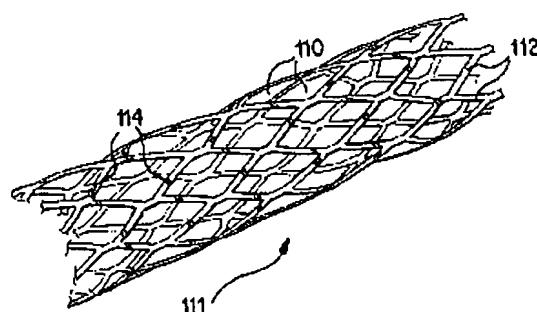


FIG. 18

Therefore, *Brown* does not teach or suggest producing a stent by having a tubular member form “a plurality of circumferential rings,” as recited in independent claim 1, 15 and 23 and as shown, for example, in Applicant’s FIGS. 6C-6D and 7B. For at least these reasons, independent claims 1, 15 and 23 are not anticipated by *Brown*. All claims dependent from claims 1, 15 and 23 are also not anticipated by *Brown* or the other prior art of record for the same reasons as claims 1, 15 and 23.

With reference to the Examiner’s comment in the Advisory Action of April 4, 2007, alleging that Applicant may be changing the scope of the claims, the claims as currently amended are consistent with the amendment of August 31, 2005, in which the species of FIGS. 6A-6D and 7A-7B, and the subspecies of FIG. 1A had been elected.

B. The Rejections under 35 USC 103(a)

Claims 7 and 8 have been rejected as allegedly obvious over *Brown* in view of U.S. Patent Application Publication No. 2002/0038146 to Harry (“*Harry*”).

Claims 11, 12 and 18 have been rejected as allegedly obvious over *Brown* in view of U.S. Patent No. 5,972,027 to Johnson (“*Johnson*”).

A prima facie case of obviousness requires: (1) a suggestion or reason to combine; (2) a reasonable expectation of success; and (3) a teaching or suggestion of all claim limitations in the prior art. *Brown & Williamson Tobacco Corp. v. Philip Morris*, 229 F.3d 1333, 1342 (Fed. Cir. 2003); *In re Regal*, 526 F.2d 1399, 1403 (C.C.P.A. 1975).

Brown has been discussed above. *Harry* teaches an expandable stent with relief cuts for carrying medicines and other materials, and has been cited by the Examiner to indicate that pores of various sized are known in the art. *Johnson* teaches an expandable intraluminar stent made of a powdered metal or polymer, and has been cited by the Examiner to indicate that a stent may be formed by a plurality of rings joined one the other. Neither *Harry* nor *Johnson* teach or suggest a stent “having a tubular member formed into a plurality of circumferential rings,” as recited in the amended claims. Therefore, the cited combinations fail to teach or suggest all the limitations in Applicant’s claims.

Conclusion

In view of the foregoing amendments and remarks, Applicants submits that the present application is in condition for allowance and respectfully requests the timely issue of a notice to that effect.

Dated: July 9, 2007

Respectfully submitted,

Franco A. Serafini
Franco A. Serafini
Registration No. 52,207
Attorney for Applicant

LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 El Camino Real, Suite 200
San Diego, California 92130
Tel.: 858.720.6320
Fax: 858.523.4314

701003205.1